34 *Halsbury's* Laws of England, 3rd Ed. page 380. This remedy is additional to the remedy upon the covenant for title, if any. In the present case I am only concerned with the third defendant's claim for the return of the purchase-money on the ground of mutual fundamental mistake. This relief, in my view, may undoubtedly be granted even after conveyance where there has been a total failure of consideration.

In my judgment the third defendant is clearly entitled to succeed on the ground of mutual fundamental mistake resulting in total failure of consideration.

For these reasons I hold that the third defendant is entitled to recover from the first and second defendants the whole of the purchase-money. There will be judgment for the third defendant against the first and second defendants for the sum of $6,687.75 and costs as taxed.

Judgment for 3rd defendant.

Solicitors: *Mallal & Namazie; Eber & Tan*; *Hilborne, Chung & Co.*

TAN HUNG CHIANG v. ANG KONG HWEE

[O.C.J. (Ambrose J.) October 10, 1964]
[Singapore — Suit No. 1035 of 1963]

Damages — Personal injuries — Negligence of passenger — Whether driver liable.

Negligence — Passenger in taxi opening taxi door when it was not safe to do so — Whether taxi driver owes a duty of care to third persons.

A passenger in a taxi driven by the defendant, and which the latter had just stopped by the side of a one way street, negligently opened a door to alight when it was not safe to do so. The door hit the forearm of the plaintiff who was passing in his car. The plaintiff brought an action against the defendant for damages for personal injuries.

Held: the defendant was not under duty to third persons to see that his passenger did not commit an act of negligence in leaving his taxi.

[**Editorial Note:** As to the liability of passengers see also cases summarised in *Bingham's* All the Modern Cases on Negligence, 2nd Edn. pp. 206-207 and *Schuster* v. *Whitehead* (1959) 21 D.L.R. 609, C.A.].

CIVIL SUIT.

H. E. Cashin for the plaintiff.

K. C. Chan for the defendant.

Cur. Adv. Vult.

Ambrose J.: This action is brought to recover damages for personal injuries sustained by the plaintiff in an accident which occurred on the 24th December, 1962, when he was driving a motor car along South Bridge Road, Singapore, which is a one-way street for south-bound traffic.

The statement of claim alleges that the defendant was driving a taxi along the same road and in the same direction as the plaintiff's car; that the taxi suddenly stopped; that the front near-side door of the taxi was opened by a passenger; that the door struck the plaintiff and caused a laceration of his right forearm; and that the accident was caused solely by the defendant's negligence.

The defendant admits in his defence that he was driving the taxi on the day in question; that the front near-side door was opened by a passenger in the taxi; and that an accident happened; but he alleges that the accident was caused solely by or contributed to by the plaintiff's negligence.

The plaintiff's version of the accident is as follows. About 10.40 a.m. on the day in question he was driving a motor car along South Bridge Road in a southerly direction in front of the magistrates' courts at a speed of 20 to 30 miles per hour and about 5 to 6 feet from the right-hand edge of the road. His car was following a taxi which was about 15 to 20 feet ahead of him. Near the junction with Upper Pickering Street the taxi slowed down after giving a signal, and swerved a little to the right. The plaintiff put out his right arm to indicate that he was slowing down. The taxi-driver put up his right forearm to indicate that he was going to stop. The taxi stopped at a hydrant, which is about 10 feet to the south of the junction of Upper Pickering Street and South Bridge Road. The off-side of the taxi was in line with the middle of the back of a car which was parked in front of it. While the plaintiff's car was passing the stationary taxi the near-side front door of the taxi was opened. The plaintiff withdrew his right arm but had no time to do so completely. The door of the taxi hit his forearm near the elbow and also the off-side of the plaintiff's car.

This is the defendant's version of the accident. A Chinese female passenger was seated in the taxi on the front seat next to him. She wished to alight at the junction of Upper Pickering Street and South Bridge Road. The taxi passed the magistrates' courts at a speed of 10 to 20 miles per hour along the right-hand side of the road. The defendant put out his right hand to indicate that he was going to the right, and then put up his right forearm to indicate that he was going to stop. He slowed down. He passed Upper Pickering Street, which was on his right, and stopped near a hydrant about 3 feet from the edge of the road. The female passenger handed him the fare. He asked her to be careful. Her hand was near the handle of the near-side front door. She opened the door. He heard a bang. She got out from the taxi and walked away, The near-side front door was twisted. The plaintiff's car moved forward about 30 feet and stopped.

It seems to me that the taxi was involved in

the accident only because the female passenger opened the door when it was not safe to do so. In my opinion she was guilty of negligence in opening the door without first taking reasonable care to see that her act would not endanger any other vehicle or road user; and her negligence was the sole cause of the accident. It is contended by counsel for the plaintiff that the defendant was negligent in that he stopped on the wrong side of the road. In my view there is no substance in this contention. It is further contended by counsel for the plaintiff that the defendant was negligent in that he allowed the passenger to open the door of the taxi when it was unsafe to do so. In my judgment, the defendant was not under a duty to third persons to see that his passenger did not commit an act of negligence in leaving the taxi. For the above reasons I give judgment for the defendant with costs.

It is necessary for me to state my assessment of the damages in case the plaintiff wishes to appeal from this judgment. Special damages have been agreed at $540. On the medical evidence before me I assess the general damages for the laceration of the right forearm, which was five inches long, at $800.

Claim dismissed.

Solicitors: *Murphy & Dunbar*; *Braddell Bros.*

RAFFLES HOTEL LTD. v. L. RAYNER SAME v. MALAYAN BANKING LTD.

[O.C.J. (Winslow J.) October 13, 1964]
[Singapore — Suit Nos. 848 and 942 of 1964]

Company — Appointment of director — Company entitled to undivided loyalty of its directors — Whether persons who are not members of a company or parties to the articles can acquire rights under articles — Injunction.

Landlord and tenant — Provision against sub-letting of premises without consent of landlord — Consent not to be arbitrarily withheld.

Under the terms of the lease of premises occupied by the plaintiff company the tenant covenanted not to assign or sublet without the previous licence in writing of the lessors provided that if the assignee or sublessee be a limited company no consent shall be given unless the articles thereof contained a provision that from time to time during the continuance of the lease the lessors shall have power to appoint a director not subject to retirement by rotation but any director so appointed shall not be a person interested in or connected with any business of a similar nature to the lessees. The articles of the plaintiff company provide that "the lessors may from time to time so long as the property so leased is held by the company appoint himself or one of themselves or any other person to be a director of the company". Malayan Banking Limited, the present lessors, appointed Leslie Rayner, the defendant in Suit 848 to be a director of the company. Mr. Rayner sought to exercise his rights as a director and to inspect the books of the company; but such inspection was refused and an *ex parte* injunction obtained against him restraining him from disclosing any information relating to the affairs of the company to any person or persons entitled to appoint a director under the terms of the articles of the company. Malayan Banking Limited then renounced Mr. Rayner and appointed themselves as directors. Suit 942 of 1964 was thereupon commenced in which certain declarations as to the validity of the appointment were sought and an *ex parte* injunction restraining the Malayan Banking Limited from exercising its powers as a director of the plaintiff company was obtained. Malayan Banking Limited through their subsidiary Malayan Finance Company Limited have a controlling interest in the Goodwood Park Hotel. A motion was brought to continue the injunction.

Held: (1) as the defendants were not members of the plaintiff company or parties to the articles of association, they could acquire no rights under the articles and although there was a clause against subletting, the consent could not be arbitrarily withheld;

(2) there was a triable issue as to whether the defendants should be permitted to exercise their rights as director and the court was not precluded from making a declaration on the validity of the appointment or from restraining the exercise of powers under an appointment which it considered should not have been made;

(3) the motion should be granted on the plaintiff's undertaking to pay damages for any loss sustained by the defendants should the latter succeed at the trial.

Cases referred to:—

(1) *Boulting* v. *Association of Cinematograph, Television and Allied Technicians* [1963] 2 Q.B. 606.

(2) *Cory* v. *Reindeer Steamship* (1915) 31 T.L.R. 531.

(3) *Aldebert* v. *Leaf* (1864) 3 New Reports 455.

(4) *Eley* v. *Positive Government Security Life Assurance Ltd.* (1876) 1 Ex.D. 20.

(5) *Treloar* v. *Biggs* 9 Ex. Cases 151.

MOTION.

M. Karthigesu for the plaintiffs.

G. S. Hill for the defendants.

Cur. Adv. Vult.

Winslow J.: It would seem well-established on the authority of *Bouling* v. *Association of Cinematograph, Television and Allied Technicians* (1) that a company is entitled to the undivided loyalty of its directors. A director who is a nominee of someone else should be left free to exercise his best judgment in the interests of the company he serves and not in accordance with the directions of his patron. If the company is not prepared to relax the rule then an action for an injunction would normally lie to restrain a nominee director from acting in any manner adverse to the interests of the company.

I am not bound to say, on an interlocutory application, whether the plaintiffs, in cases like these, would be likely to succeed at the trial though the probability of success would naturally enhance the merits of the application. If it were not for the fact that the continuance of the injunction in Suit No. 848 of 1964 is no longer required on the ground that the defendant has ceased to be a director and thereby removed the reasons for the apprehension originally felt when